

News from Ed Markey

United States Congress

Massachusetts Seventh District

FOR IMMEDIATE RELEASE

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June 6, 2005

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REP. MARKEY INVESTIGATES CONFLICTS OF INTEREST THAT TAINT MERGER “FAIRNESS OPINIONS”

Questions Whether Goldman Sachs Role in Gillette-P&G Merger Is In Best Interests of Shareholders

Washington, DC: Rep. Edward J. Markey (D-MA), a senior member of the Energy and Commerce Committee, today released a letter to the Securities and Exchange Commission in which he requested information about conflicts-of-interests in corporate transactions that result when firms that stand to benefit from the completion of a transaction also are responsible for the evaluation of whether the transaction is in the best interest of shareholders. This evaluation is called a “fairness opinion,” and Rep. Markey has been a longstanding critic of the dual role of a firm both benefiting from, and issuing a fairness opinion on, corporate transactions.

“Allowing a company that has a stake in the completion of a corporate transaction to also determine whether the transaction benefits shareholders is like letting Joe Torre umpire a Red Sox-Yankees game from the Yankee dugout. You can’t be a disinterested observer when you have a vested interest in the outcome,” Rep. Markey said.

As Chairman of the Energy and Commerce Subcommittee on Telecommunications and Finance from 1987 to 1993, Rep. Markey introduced, and the House of Representatives passed, H.R. 617, the Limited Partnership Rollup Reform Act of 1993, which required firms that prepare fairness opinions to be independent and objective evaluators without a financial stake in the completion of the transactions they assess. When provisions of H.R. 617 were included in the Government Securities Act Amendments and Limited Partnership Rollup Reform Act of 1993 (P.L. 103-202), the fairness opinion language was modified to require better disclosure regarding potential conflicts-of-interest that the preparer of a fairness opinion might have and to direct the GAO to conduct a study on conflicts-of-interest in the issuance of fairness opinions.

“While the Sarbanes-Oxley Act eliminated many blatant conflicts-of-interest on Wall Street, the problem of tainted fairness opinions has persisted. The pending merger of Gillette and P&G is yet another example of a company – in this case Goldman Sachs – being both a participant in, and an evaluator of, the same transaction. These types of dual roles undermine investor confidence and have the potential to harm the interests of shareholders. I have requested information from the Security and Exchange Commission on the prevalence of these conflicts and will continue to support prohibition of these unwise arrangements,” Rep. Markey concluded.

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